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105-176

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 190.

WILLIAM LUDLOFF AND CHARLES LUDLOFF, TRADING AS LUDLOFF BROTHERS, PLAINTIFFS IN ERROR.

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED MARCH 4, 1880.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the United States court-house in the city of Baltimore, on the first Monday of November, being the third day of the same month, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Hugh L. Bond, circuit judge; Thos. J. Morris, judge Maryland district; Archibald Sterling, jr., esquire, attorney; John M. McClintock, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

CHARLES LUDLOFF AND WILLIAM LUDLOFF,
claimants of 14,430 domestic cigars,
vs.
THE UNITED STATES.

2 Be it remembered that heretofore, to wit, on the 30th day of October, in the year of our Lord eighteen hundred and seventy-nine, the said Charles Ludloff and William Ludloff, by John V. L. Findlay, esquire, their attorney, filed in the circuit court here a record from the district court of the United States in and for the Maryland district in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States for the district of Maryland, begun and held at the city of Baltimore on the first Tuesday in September, being the second day of the same month, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Thomas J. Morris, judge Maryland district; Archibald Sterling, jr., esquire, attorney; John M. McClintock, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

3 THE UNITED STATES
vs.
CERTAIN CIGARS FOUND IN THE HANDS OF
Ludloff Brothers.

Be it remembered that heretofore, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, The United States of America, by Archibald Sterling, jr., esquire, attorney of the United States for the district of Maryland, prosecuted and sued forth out of the district court here the writ of the United States of attachment, directed to the marshal of the district of Maryland, in the words and of the tenor following, to wit:

Attachment.

THE UNITED STATES OF AMERICA:
District of Maryland, to wit:

The President of the United States of America to the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep
4 fourteen thousand four hundred and thirty domestic cigars found in possession of Ludloff Brothers, if they be found in your district, to appear before the judge of the district court of the United States of America for the district of Maryland, at the United States court-room in the city of Baltimore, on the 11th day of December next, to answer unto the information of the United States in a cause of forfeiture, and how you shall execute this precept you make known to us in our district court for the district aforesaid, and have then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, this 26th day of November, in the year of our Lord one thousand eight hundred and seventy-eight.

Issued 26th day of November, 1878.

[SEAL.] JAS. W. CHEW, *Clerk.*

And the said United States, by their said attorney, on the day of prosecuting and suing forth the foregoing writ filed in court here the following information in rem in the words following, to wit:

Information in rem.

5 UNITED STATES OF AMERICA,
District of Maryland:

In the district court of the United States for the Maryland district.

Be it remembered that heretofore, to wit, on August 24th, 1878, Robert M. Proud, esq'r, collector of internal revenue for the third election district of Maryland, seized thereat on land, within the said district, the following described property, that is to say, 14,430 domestic cigars, of the value of 293 dollars, found in the possession of William Ludloff and Charles Ludloff, doing business together under the firm and style of Ludloff Brothers; and now holds the same thereat, as forfeited to the United States for such violation.

And now comes into court here Archibald Sterling, the attorney of the United States for said district, and, as cause for such forfeiture, alleges as follows:

First. That all and singular said cigars were then lately removed from the manufactory of the said Ludloff Brothers, at the city of Baltimore, being the place where the same were made in said district, without being packed in boxes having the proper stamps, respectively thereon denoting the tax, contrary to section 3397 of the Revised Statutes of the
6 United States.

Second. That all and singular the said cigars were then lately before offered for sale by the said Ludloff Brothers, at the said city, not

properly boxed and stamped, contrary to section 3397 of said statutes.

Third. That all and singular the said cigars were found in the possession of the said Ludloff Brothers, the manufacture's thereof; and that they, then lately before at the said city, unlawfully did remove certain, to wit, one thousand cigars, by them manufactured at the said manufactory, without the proper stamps denoting the tax thereon, contrary to 3400th section of said statutes.

Fourth. That, by reason of the premises and by force of the said statutes, the said property became and is forfeited to the United States.

Wherefore he prays that due process may issue against the same, together with monition to all persons concerned in interest, to show cause at the return of the process why said property shall not by the court be decreed to be forfeited to the United States.

ARCHIBALD STERLING, JR.,
Attorney of U. S. for Maryland.

7 And thereupon, on the same day of the issuing of said writ and the filing of the foregoing information, William Ludloff and Charles Ludloff, trading as Ludloff Brothers, appeared in court here by John V. L. Findlay, esquire, their attorney, and filed in court here the following claim and plea, to wit:

Claim and plea.

In the U. S. district court for Maryland district.

THE UNITED STATES
vs.
CERTAIN CIGARS FOUND IN THE HANDS OF LUDLOFF BROTHERS, at 3rd district of Maryland.

Claim and plea of Ludloff Brothers.

The claim of Charles and William Ludloff, trading as Ludloff Brothers, shows that they are the owners of the said cigars, and that no other person is the owner thereof.

And for plea to the said information these claimants say the said cigars did not, nor did any part thereof, become forfeited to the United States in manner and form as in the information in this behalf alleged.

8 JOHN V. L. FINDLAY,
Attorney for Claimants.

At which said eleventh day of December, in the year eighteen hundred and seventy-eight, being the day of the return of the foregoing writ of attachment, come into court here the said United States, by their said attorney, and the marshal of the district aforesaid, to whom the foregoing writ was in form aforesaid directed, makes return thereof to the court here, thereon endorsed, to wit, "26' November, 1878, attached. John M. McClintock, marshal;" and the said claimants also appear in court here, by their attorney aforesaid.

And thereupon further process of and upon the premises aforesaid between the parties aforesaid, by the consent of the said parties, by their at-

torneys aforesaid, and by order of the court here thereon, is continued from term to term of the said court until the first Tuesday of September, in the year eighteen hundred and seventy-nine. And now here, at this day, to wit, the first Tuesday of September, in the year eighteen hundred and seventy-nine, come again into court here the parties aforesaid, by their attorneys aforesaid, and the said United States, by their attorney aforesaid, join issue upon the plea of the said claimants above pleaded.

9 Whereupon, for trying the issue aforesaid, above joined between the parties aforesaid, it is ordered by the court here that eighteen persons from the pannel of petit jurors returned to the court here by the marshal of the district aforesaid be drawn by ballot, in accordance with the statute in such case made and provided; and thereupon the eighteen persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel of the respective parties, and the counsel of each of the said parties having stricken out three persons from the said list, thereupon the remaining twelve persons being called, come; that is to say, George T. Parkhurst, Charles E. Blaney, Oliver B. Magruder, Abraham Fowble, Ferdinand Trotten, Henry O. Connell, Samuel I. Soper, Charles C. Egerton, Gabriel D. Clark, Jacob P. Hartman, Charles M. McCahan, and Daniel G. Emory, who being empannelled and sworn to say the truth in the premises, upon their oath do say that they find their verdict for the United States on the third count of the said information, as therein is alleged and set forth.

10 Thereupon it is considered by the court here that the said fourteen thousand four hundred and thirty cigars found in the premises of the said claimants as aforesaid, be condemned as forfeited to the use of the United States of America; and it is also considered that the said United States recover against the said William Ludloff and Charles Ludloff, claimants as aforesaid, the sum of thirty-one dollars and sixty-six cents for their costs and charges in this behalf laid out and expended; and the said claimants in mercy, &c.

MEMORANDUM.—Verdict and judgment were rendered in the cause aforesaid on the 19th day of September, 1879.

MEMORANDUM.—Before the said jurors withdrew from the bar of the court here, the said claimants, by their attorney aforesaid, filed in court here the following bill of exceptions, to wit:

BILL OF EXCEPTIONS.

In the U. S. dist. ct. for the Md. dist.

THE UNITED STATES
vs.
A LOT OF CIGARS SEIZED IN THE HANDS OF Ludloff Brothers.

11 *Claimant's bill of exceptions.*

At the trial of this cause it appeared in evidence that prior to the seizure of the said cigars and prior to the 1st of May, 1878, the said Ludloffs

carried on the manufacture of cigars in the rear part of a small room on the first floor of the building known as No. 60 W. Fayette street, in the city of Baltimore, and at the same time and place were also engaged in doing the business of a dealer in tobacco, that is to say, selling imported and domestic cigars, partly manufactured by themselves, and partly purchased from others, and also selling pipes, smoking material, chewing tobacco, snuff, &c., &c., the said Ludloffs having first paid to the United States the special tax as dealers in tobacco, and also the special tax as manufacturers of cigars, and that in the course of said business the claimants sold to their customers cigars manufactured by them in the rear part of said room as aforesaid in quantities less than twenty-five, but out of stamped boxes, which said boxes were duly branded, marked, and stamped. and then deposited in a show-case before said sale was made, and no cigars were sold by the said Ludloffs upon which the tax had not been paid.

12 The Commissioner of Internal Revenue, on the 21st March, 1878, issued a circular letter, embodying an order which was to take effect on and after the 1st of May, 1878, and was expressed in the following terms, to wit:

CIRCULAR No. 181.

Concerning the factory premises or place where cigars are made, and the communication between the same and the place where the manufacturer sells at retail.

[1878. Department No. 26. Internal Revenue.]

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, D. C., March 21, 1878.

The portions of the law regulating the manufacture and sale of cigars, without declaring in specific language that the two kinds of business, to wit, manufacturing cigars and selling manufactured tobacco and cigars at retail, shall not be carried on in the same place at the same time, impose such restrictions, make such requirements, and declare such forfeitures and penalties as render it impracticable for these two kinds of business to be carried on together, as above stated. (See sections 3387, 3392, and 3397 of the Revised Statutes of the United States; also special 85, revised, and form 36½.)

13 Under as lenient a construction of these several sections of the law as their language and the purpose for which they were enacted, to wit, the protection of the revenue, will admit, it is held that a cigar factory, or the place where cigars can be made for sale, must be at least an entire room, separated by walls and partitions from all other parts of the building, and that the factory or place of manufacture designated and described on form 36½, cannot be used, nor can any portion thereof, even though marked off or separated from the remainder by a railing, counter, bench, screen, or curtain, be used as a store where the manufacturer can sell his cigars otherwise than in legal boxes, properly branded, labelled, and stamped.

When a cigar manufacturer has a store in a room adjoining his factory, a door and windows may be allowed between the factory and store; and, if necessary for light or ventilation, the upper portion of the partition between the factory and store may be of glass or wire-cloth.

Collectors and all other revenue officers are enjoined to see that these instructions are strictly enforced on and after May 1, 1878.

GREEN B. RAUM,
Commissioner.

14 This order was disregarded by the said Ludloffs for reasons which are fully set out in the bill of complaint hereinafter mentioned, and on the 23rd day of August, 1878, or thereabouts, the said cigars, the property of the said Ludloff Brothers, to the amount of fourteen thousand four hundred and thirty (14,430) were seized by the collector of internal revenue for the district of which the said city of Baltimore was and is a part, as forfeited to the United States, and were found when seized in boxes not stamped, in rear part of the room as before described, and in due course an information was filed against the said cigars by the United States. The place where the said cigars were seized was in the rear part of the room as stated, and this rear part had been designated as the factory or place of manufacture, where the said Ludloffs proposed to carry on their business, in manner and form as prescribed by the Commissioner of Internal Revenue, as follows:

(36½.)

UNITED STATES INTERNAL REVENUE.

Cigars manufacturers' statement.

15 To be rendered to the collector or deputy collector in duplicate, without previous demand therefor, by every manufacturer of cigars before commencing or continuing business. Act of July 20, 1868, section 82, as modified by section 1, act of December 24, 1872, section 3387, R. S.

Ludloff Bros., of Baltimore, in the 6' division of the 3' district of the State of Md., at No. 60 W. Fayett' street, propose to manufacture cigars. And so much of the building or parts of the building, stories, apartments. room or rooms, as is hereinafter described, is to be used exclusively and solely for manufacturing cigars, and it is to be known as my manufactory, or place where cigars are made, to wit, in the room adjoining the store in the rear, on the first floor of premises No. 60 West Fayette street.

There are employed in the premises above described, or I propose to employ, five persons in making cigars; which cigars are manufactured for or to be sold and delivered to , residing at No. in the and by occupation a .

(Signed) LUDLOFF BROS.

I, William Ludloff, do swear that the above is, to the best of my knowledge and belief, a true and correct statement of the place, street,
16 number, and the exact premises where the business of manufacturing cigars is, or is to be, carried on by Ludloff Bros., and all the other matter stated herein is true and correct.

(Signed) WILLIAM LUDLOFF.

Sworn before me this 25th day of May, 1878.

(Signed) R. G. KING,
Dep'ty Collector.

NOTE.—The blank space in this form after the words "to wit" is to be filled with a precise and accurate description of the premises. If the manufactory comprises anything less than the entire building, then the description must specify what portion of the building, whether the first, second, or third story of the same, and what room or rooms therein. The same premises or room cannot be used for carrying on the business of a cigar manufacturer and a dealer in cigars. In any building, room, or apartment of any building designated in this statement as the manufactory or place of manufacture, no cigars can be sold except such as are there manufactured, and are in original and full packages.

But at the time of the said seizure, the wire part of the partition
17 having been previously removed by the claimants, there was no division or separation between the said rear part of the room designated as factory as aforesaid, and the front part of the room where the business of selling cigars, &c., at retail was carried on by the claimants, except a wooden counter extending part of the way across the room, and from three to three and a half feet high, upon which said wire part of the partition had rested.

Further, to maintain the issue on their part, the United States offered in evidence the following bill of complaint, to which bill the claimants were parties.

Bill of Complaint.

To the judges of the circuit court of the United States for the district of Maryland:

Joseph Crisp, Dietrich Fehsenfeld, Arnold Holste, Bernard Vogel, George Brag, Henry Becker, Louis A. Becker, (the two last named parties being partners under the style of H. Becker & Sons), Elias T. Cruse, William K. Dufer, Francis Dreves, Henry Fankhanel, Henry Feldman, Louis Fredrick, George Debraskey, Henry Gottschalk, Catharine M. Glaser, Leopold Hayman, John Henricks, Barney L. Hess, Jacob Her-
18 man, Edwin Johnson, Frederick Kuhne, Gustav Kuhne (the two last named parties being partners under the style of Kuhne & Bro.), John Kramer, William Lubkine, Charles Loffler, William Longschmidt, Oliver P. Merryman, Charles H. Merryman (the two last named parties being partners under the style of O. P. Merryman & Co.), William Marcks, Charles Muhlberger, Frederick Muller, Charles H. Klemm, Charles Ludloff, William Ludloff (the two last named parties being partners under the style of Ludloff Bros.), Edmund I. Oppelt, Charles R. Becker, Henry Bingle, Thomas Cullington, William E. Penn (the two last named parties being partners under the style of Cullington & Co.), Frederick Dotterweich, Henry Erner, John T. Freese, Louis Fehsenfeld, Julius Fink, George T. C. Gorbel, John F. Gunterman, Henry Hashagen, John T. Houck, Edward T. Haupt, Louis Harman, Theodore Havelman, George Keohler, August Kunkel, Louis P. Harman, John Kappler, Jacob Ludloff, Nathan Lindeman, George H. Marcks, Edward R. McCan, Thomas McDermott, George H. M. Marriott, August Meyer, John E. Miller, Edward Marz, William H. Mantz, John F. Requardt, Martin Stuckert, Louis Scheide, Hubert Sturm, John L. Schmidt, Herman Snyder, William Juerrs (the two last named parties being partners under the

style of Snyder & Juerrs), John Schussele, Harman Twelbeck,
19 Charles Vanderheide, Henry Wittler, William Wicks, John York,
George W. Cruse, Henry Meyer, Edward Neilson, John Stuckert, Leopold Arnd, Joseph Suresch, Charles F. Scherf, John Schuler, Andrew Schwartz, Peter Stein, Philip Steinmuller, Henry N. Totebush, George Volz, Andrew I. Walter, Christian Waderhake, John H. Weiss, and Columbus C. Isaacs, all of Baltimore City, and citizens of the State of Maryland, bring this, their bill of complaint, against Robert M. Proud, also of Baltimore City, and a citizen of the State of Maryland.

And thereupon your orators complain and say that they are citizens of the United States, residing in the said State of Maryland, and are engaged in the business of manufacturing cigars, and selling the same at retail at the place of manufacture, together with manufactured tobac'o, pipes, smoking material, &c., and this business they have severally carried on for many years in said city and State, without interference or molestation, and in strict conformity with the statutes of the United States regulating the mode and prescribing the conditions on which the said business shall be carried on. While thus peaceably and lawfully engaged in the pursuit of their said business, on the 23d day of August, A. D. 1878, and
20 on the 26th day of the same month, by order and direction of the said Proud, who is collector of internal revenue for the collection district which embraces the said city of Baltimore, the respective places of business of certain of your orators, that is to say, of the said Edward I. Oppett, Joseph Crisp, Charles H. Clemm, Bernhard Vogel, Deitrich Fehsenfield, Charles Ludloff, and William Ludloff were entered by the deputies and agents of the said Proud, who seized and carried away a considerable quantity of the goods and chattels of your orators last named, to the value of one thousand dollars, and the said Proud, as collector aforesaid, and by pretended authority and warrant of law, now holds and has advertised the same for sale, as forfeited to the United States, because, as he alleges, it is not lawful for your orators, whose property he seized as aforesaid, to manufacture and sell cigars at retail at the place of manufacture, or to sell at said place manufactured tobacco, pipes, or other smoking material.

And, further complaining, your orators say that on the 28th day of June, A. D. 1878, it was solemnly adjudged and determined by the district court of the United States for the district of Maryland, in the case of the United States vs Frederick Dotterweich (a test case, brought for
21 the purpose of settling the law upon the subject) that the business of manufacturing and selling cigars at retail, by the same person at the place of manufacture, as well as selling at said place manufactured tobacco, pipes, and other smoking material, was not prohibited by law, but, on the contrary, was expressly recognized and permitted; and, in accordance with that construction of the law, the court delivered an opinion in which it was held that this view of the law was too clear to admit of doubt, and instructed the jury to acquit the said Dotterweich of the precise charge which is now made the basis of said seizures, and the said Dotterweich was accordingly acquitted. And so your orators charge that the law expressly allows the manufacture and sale of cigars, at retail, by the same person, at the same time and place, as well as manufactured tobacco, pipes, and smoking material; that in so manufacturing and selling they but do

what they have a right to do, and that the seizures aforesaid by said Proud under pretended authority of his office are wrongful and in clear and palpable violation of the law.

Notwithstanding the aforesaid decision, which remains unreversed, and this view of the law, in itself clear and emphatically announced by
22 a court of competent jurisdiction, the said Proud, as charged, has made the seizures aforesaid, and now threatens all your orators engaged in the same business with similar seizures of their property unless they consent to conduct their business of selling cigars, manufactured tobacco, pipes, and smoking material at retail in a room separated from the place where the said cigars, &c., have been manufactured, and thereby abandon the mode of business as carried on and practiced by them for a long series of years, which the said district court has pronounced to be lawful, and upon which the living and support of your orators depend.

And, further complaining, your orators show that while an action lies against the said Proud, and has already been instituted for the trespass mentioned, the further seizure of their goods and property, and the detention and sale of the same by the said Proud, as by him are threatened, will work an injury to your orators for which the law affords no full, complete, and adequate remedy, and that without the interposition by this court of the relief afforded by the writ of injunction your orators will be remediless in the premises.

23 In tender consideration whereof, and to the end that the said Proud may answer the several matters and things hereinafter charged, and that he, his deputes, and agents, and each and every of them, may by injunction be restrained from seizing the goods and chattels, or any property or interest, real or personal, of your orators, or any of them, or from selling the property already seized by him as aforesaid, or from molesting your orators or interfering with their business for or on account of any of the causes aforesaid, and that the property already seized as aforesaid may be returned:

May it please your honors to grant unto your orators the writ of injunction, enjoining and strictly prohibiting the said Robert M. Proud, collector of internal revenue, from seizing or selling any goods, chattles, or property, real or personal, of your orators, or any of them, and from interfering with or molesting them, or any of them, in their business for or on account of their selling cigars, the product of their own manufacture or of others, at retail at the place of manufacture, or on account of their selling manufactured tobacco, pipes, and smoking material at said place, and also the writ of subpœna against the said Robert M. Proud, of Bali-
24 more City aforesaid, commanding him to appear in this court at some certain day to be therein named, to answer the premises and show cause, if any he has, why relief should not be granted as prayed.

And as in duty, &c.

JOHN V. L. FINDLAY,
GEO. C. MAUND,
Solicitors for Complainants.

On this 7th day of September, A. D. 1878, before the subscriber, a United States commissioner for the Maryland district, personally appeared Thomas Cullington, one of the above-mentioned complainants, and made

oath in due form of law that the matters and things set forth in said bill are true to the best of his knowledge and belief.

ROBT. LYON ROGERS,
U. S. Commissioner for Maryland.

On the foregoing bill it is this 17th day of September, 1878, ordered that the motion for the injunction be set down for a hearing on the 28th day of September, 1878, provided that a copy of this bill and of this
25 order be served upon the defendant Proud, or his attorney on or before the 17th day of Sept., 1878. And whereas it has been made apparent to the court that the complainants may be subjected to irreparable loss or injury pending the hearing on said motion unless the further seizure of their property, and the sale of their property already seized and now advertised by the defendant for sale, be prevented, it is further ordered by the court that the said Proud desist from making further seizures, and also from selling the property of the complainants already seized for or on account of any of the matters or things alleged in the said bill until the further order of this court.

HUGH L. BOND,
Ct. Judge.

SEPT. 17TH, 1878.

Whereupon the United States offered the following prayer for instruction to the court, which by the court was granted.

PLAINTIFF'S FIRST PRAYER.

If the jury find from the evidence the seizure of the cigars in the information mentioned, and that at the time of said seizure the cigars
26 were found in possession of the claimants, and the claimants were carrying on the business of manufacturing cigars and selling the same by retail, said retail sales being in quantity less than 25 and not sold in stamped boxes, and that said manufacture and said retail sales were carried on in a room in which there was no separation except a wooden bar about 3 feet high, extending partly across the said room, the jury should find for the United States under the 3d claim of the information, although the jury may find that claimants made cigars only behind said wooden bar and sold at retail out of stamped boxes.

The claimants submitted five prayers to the court; the first was as follows:

Before the jury can find for the United States in the case they must find from the evidence that the cigars seized, when seized, had been removed from the place where they were manufactured without being packed in boxes with the proper stamps thereon denoting the tax;

Or that they were offered for sale in the place not properly branded and stamped;

Or were kept for sale in the place in which they were seized
27 without being stamped as required by law;

Or that certain cigars, by them manufactured, were removed by the claimants from their manufactory without the proper stamps on the boxes denoting the tax thereon.

This prayer the court granted, but with the following qualifications:

In explanation of the last paragraph of the claimants' first prayer, I instruct the jury that if they find that the claimants, at the time of the seizure, were carrying on the business of retailing cigars by selling them in quantities of less than 25, and not in boxes properly stamped, in the same room in which they manufactured them, and with no other partition in the room than that set forth in the first prayer of the U. S., then such retail selling to persons who took them away, if the jury so find, constitutes the removeal by the claimants of cigars from their manufactory, without the proper stamps on the boxes denoting the tax thereon within the meaning of said prayer.

The second prayer of claimants was as follows, and was granted:

If the jury believe from the evidence that the cigars seized were found at the time of the seizure, within the limits of the factory, as de-
28 signated by the claimant on form 36½, filed on the 25th May, 1878, there can be no forfeiture of the cigars, by reason of the fact of their being found in boxes without the proper stamps, denoting the tax thereon, or loose in the factory and not boxed.

The third prayer of claimants was as follows, and was rejected:

3. There is no evidence in the case from which the jury may infer that the business of selling cigars at retail in any other way than as allowed by law was carried on at the place of manufacture by the claimants.

The fourth prayer of claimants was as follows, and was granted:

4. The burden of proof is upon the United States to establish the fact to the satisfaction of the jury, that some one or all of the offences designated in the particular sections of the Revised Statutes, counted on in the information, were committed by the claimant.

The fifth prayer of claimants was as follows, and was rejected:

5. The business of manufacturing cigars and selling the same in less quantities than by the box, at the place of manufacture, is not pro-
29 hibited by law, provided the manufacturer has a license as a dealer in tobacco, when he sells products other than his own manufacture.

To the granting of the prayers offered by the United States, and to the addition of the qualification to the first prayer as presented by the claimants, and to the rejection of the third and fifth prayers of the claimants, the claimants prayed leave to except to each and every of the said rulings of the court, and that the court would sign and seal this their bill of exception according to the form of the statute in such case made and provided, which is accordingly done this 7th day of October, 1879.

THOS. I. MORRIS. [SEAL.]

And afterwards, to wit, on the twenty-second day of September, A. D. eighteen hundred and seventy-nine, the said claimants, by their attorney aforesaid, filed in court here the following petition, to wit:

Petition for sale.

30 In the U. S. dist. ct. for the Md. dist.

THE UNITED STATES
vs.
A LOT OF CIGARS SEIZED IN THE HANDS OF Ludloff Bros.

To the honorable Thomas I. Morris, judge of the U. S. dist. court for the Md. dist.:

The petition of Charles and William Ludloff, trading as Ludloff Brothers, respectfully shows that the said cigars were seized in their hands on or about the 23rd of August, 1878; that they are the owners of the same, and no other person has any interest, direct or indirect, in said cigars. That the said cigars, under the ruling of this court, were forfeited to the United States on the 19th of September, 1879. That exceptions were taken to said ruling, and that the case will be carried to the Supreme Court of the United States. In the meanwhile the said cigars are likely to deteriorate in value, and the custody of the same is quite expensive, and it would be for the benefit of all parties concerned to have the same put up at public auction and sold. Wherefore your petitioners pray your honor to pass an order for the sale of the said cigars and the return
31 of the proceeds of sale into the registry of the court, to abide the issue of the final decision in the said case. And as in duty bound they will ever pray.

JOHN V. L. FINDLAY,
Att'y for Petitioners.

The petitioners suggest that a publication of two days' notice of the said sale would be sufficient under the circumstances as stated in the said petition.

JOHN V. L. FINDLAY,
Att'y for Pet'r.

Upon which the court passed the following order, to wit:

Order for sale.

The above petition having been read and considered by the court, it is, this 22nd day of September, 1879, ordered by the court that the marshal offer the said cigars at public sale, after having given two days' notice of said sale in the Morning Herald, a paper published in the city of Baltimore, and after he has sold the same that he return the proceeds of the said sale into the registry of the court, to abide the final decision of the said case as prayed.

THOS. I. MORRIS.

32 And thereupon afterwards, to wit, on the twenty-second day of October, in the year eighteen hundred and seventy-nine, the said claimants, by their attorney aforesaid, produced to the court here the writ of United States of America for the correcting of errors of and upon the

premises, commanding that the judgment aforesaid, so as aforesaid rendered, with all things thereunto relating, be transmitted to the circuit court of the United States for the fourth circuit in and for the district of Maryland, to be held at the city of Baltimore on the first Monday of November next, which said writ is as follows, to wit:

THE UNITED STATES OF AMERICA:

The President of the United States of America to the judge of the district court of the United States in and for the district of Maryland, greeting:

[U. S. CIRCUIT CT. SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, between the United States of America, plaintiffs, and certain cigars found in the possession of William Ludloff and Charles Ludloff, trading as Ludloff Brothers, defendants, a manifest error hath happened, to the great damage of the said defendants,

33 as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the fourth circuit in and for the Maryland district, together with this writ, so that you have the same at Baltimore on the first Monday in November next, in the said circuit court then and there to be held, that, the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of our Supreme Court, this 22d day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued 22d October, 1879.

JAS. W. CHEW,
Clerk Cir. Court U. S.

34 The United States of America to Archibald Sterling, jr., district attorney of the United States in and for the Maryland district, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the fourth circuit in and for the Maryland district to be held at the city of Baltimore on the first Monday in November next, pursuant to a writ of error filed in the clerk's office of the district court of the United States in and for the Maryland district, wherein William Ludloff and Charles Ludloff, trading as Ludloff Brothers, claimants of certain cigars, are plaintiffs in error and The United States of America are defendants in error, to show cause, if any there be, why the judgment rendered against the said William Ludloff and Charles Ludloff, claimants aforesaid, as in the writ of error mentioned, shall not be corrected, and why speedy justice should not be done the parties in this behalf.

Witness my hand and seal this 22d day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

THOS. I. MORRIS. [SEAL.]

I hereby acknowledge notice of the above citation.

ARCHIBALD STERLING, JR.,
Att'y for U. S.

35 And at the same time the said claimants produced and filed in court here the following bond, to wit:

Writ of error bond.

Know all men by these presents that we, Charles and William Ludloff, trading as Ludloff Brothers, and Edmund I. Oppelt, of the city of Baltimore, and the State of Maryland, are held and firmly bound unto the United States in the full and just sum of twenty-five dollars, to be paid to the said United States or its certain attorney; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Signed and sealed and dated this 21st day of October, 1879.

Whereas lately, at a district court of the United States held in and for the district of Maryland, in a suit depending in said court between the United States and the said Ludloff Brothers, claimants of 14,430 domestic cigars, seized as forfeited to the United States, judgment was rendered against the said claimants; and the said claimants have prayed a
36 writ of error out of the circuit court of the United States for the fourth circuit and the district of Maryland because in the record and proceedings, as also in the rendition of the said judgment, a manifest error hath happened, to the great damage of the said claimants:

Now, therefore, the condition of the above obligation is such that if the said claimants, the Ludloff Brothers, shall prosecute the said writ of error to effect, and answer all damages and costs if the said Ludloff Brothers fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

LUDLOFF BROS. [SEAL.]
WILLIAM LUDLOFF. [SEAL.]
CHARLES LUDLOFF. [SEAL.]
EDMUND I. OPPELT. [SEAL.]

Which said bond is thus endorsed, to wit, "Bond approved Octo. 22, 1879.

"THOS. J. MORRIS."

In pursuance whereof, and according to the statute in such case made and provided, a record of the judgment aforesaid, with all things thereunto relating, together with said writ of error annexed, is hereby transmitted to the said circuit court accordingly.

Test:

JAS. W. CHEW, *Clerk.*

37 UNITED STATES OF AMERICA,
District of Maryland, to wit:

I hereby certify that the foregoing is a true copy of the record and proceedings of the said district court in the aforesaid cause.

In testimony whereof I hereto set my hand and affix the seal of the said district court this 30th day of October, A. D. 1879.

[U. S. DIST. C'T SEAL.] JAS. W. CHEW,
Clerk of said District Court.

Cost of record, $15.35; paid.

And thereupon comes into the circuit court here as well the said Charles Ludloff and William Ludloff, the appellants, by John V. L. Findlay, esquire, their attorney, as the said United States, by Archibald Sterling, jr., esquire, their attorney.

Whereupon all and singular the premises being seen and by the court here fully understood, and mature deliberation being thereupon had, it is considered by the court here that the judgment of the said district court, so as aforesaid rendered, be, and the same is hereby, affirmed. It is also considered that the said United States recover against the said Will-
38 iam Ludloff and Charles Ludloff the sum of six dollars and fifty cents for their costs and charges in this behalf laid out and expended, and the said appellants in mercy, &c.

MEMORANDUM.—Judgment was rendered on the 28' November, 1879.

Whereupon the said Charles Ludloff and William Ludloff, by their attorney aforesaid, in open court here sued out of the circuit court of the United States for the fourth circuit in and for the Maryland district the writ of the United States of America for the correcting of errors of and upon the premises, commanding that the judgment aforesaid, with all things thereunto relating, be transmitted to the Supreme Court of the United States to be held at Washington on the second Monday of October next, the tenor of which said writ is as follows, to wit:

39 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

[SEAL.] Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court before you between Charles Ludloff and William Ludloff, claimants of certain cigars, plaintiffs in error, and The United States of America, defendants in error, a manifest error hath happened, to the great damage of the said Charles Ludloff and William Ludloff, as by their complaint appears:

We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein

39½ to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of our Supreme Court, the 22d day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued the 22d day of December, 1879.

JAS. W. CHEW,
Clerk of said Circuit Court.

40 The United States of America to Archibald Stirling, esquire, attorney of the United States for the district of Maryland, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein Charles Ludloff and William Ludloff, claimants of certain cigars, are plaintiffs in error and The United States of America are defendants in error, to show cause, if any there be, why the judgment rendered against the said Charles Ludloff and William Ludloff in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in this suit.

Witness my hand and seal this 31st day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

THOS. J. MORRIS. [SEAL.]

Service acknowledged this 31st day of December, 1879.

A. STIRLING, JR.,
U. S. Att'y.

(Indorsed:) Ludloff vs. U. S. Writ of error & citation. Filed 31st Dec'r, 1879.

41 *Bond.*

Know all men by these presents that we, Charles Ludloff, William Wick, Diedrich Fehsenfeld, Edmund J. Oppelt, and Charles H. Klemm, all of Baltimore City, are held and firmly bound unto the United States of America in the full and just sum of two hundred dollars, to be paid to the said United States or their certain attorney; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 20th day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at a circuit court of the United States for the fourth circuit in*d* and for the Maryland district, begun and held at the city of Baltimore on the first Monday of November, in the year of our Lord one thousand eight hundred and seventy-nine, in a suit depending in said circuit court between Charles Ludloff and William Ludloff, claimants of certain cigars, plaintiffs in error, and the said United States, defendants in error, judgment was rendered against the said plaintiffs in error;

42 and the said Charles Ludloff and William Ludloff having obtained a writ of error (and filed a copy thereof in the clerk's office of said

court) to reverse the judgment in the aforesaid suit, and a citation directed to the attorney of the United States for the Maryland district, citing and admonishing the said United States to be and appear at a Supreme Court to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such that if the said Charles Ludloff and William Ludloff, claimants aforesaid, shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES LUDLOFF. [SEAL.]
WILLIAM WICK. [SEAL.]
DEIDRICH FEHSENFELD. [SEAL.]
EDMUND J. OPPELL. [SEAL.]
CHARLES H. KLEMM. [SEAL.]

Signed, sealed, and delivered in presence of—
HENRY T. MELONEY.

The foregoing bond is thus endorsed, to wit:
Bond approved this 31st day of Dec'r, 1879.

THOS. J. MORRIS,
District Judge.

In pursuance whereof, and according to the statute in such case made and provided, a record of the judgment aforesaid, with all things
43 thereunto relating, together with the said writ of error annexed, is transmitted to the Supreme Court accordingly.

Test:

JAS. W. CHEW, *Clk.*

DISTRICT OF MARYLAND, *to wit:*

I do certify that the foregoing is a true transcript of the record and proceedings of the circuit court of the United States for the fourth circuit, in and for the district of Maryland, in the aforesaid cause.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court this 4th day of February, A. D. 1880.

[SEAL.]

JAS. W. CHEW,
Clk of said Circuit Court.

Cost of record, $18.10.

(Indorsement on cover:) No. 190. William Ludloff and Charles Ludloff, trading as Ludloff Brothers, plaintiffs in error, vs. The United States. Maryland C. C. U. S. Filed 4th March, 1880.

2702——2